

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW
YORK,

Plaintiff

vs.

SYMANTEC CORPORATION,

Defendant

Civil Action No. 3:13-cv-00808-JRS

JURY TRIAL DEMANDED

**JOINT STATEMENT IN RESPONSE TO
THE COURT'S ORDERS OF JULY 2, 2019 (DKT. NOS. 255 AND 256)**

Pursuant to the Court's July 2, 2019 order granting Symantec's Motion to Permit Additional Claim Construction (the "Claim Construction Order"), Plaintiff The Trustees of Columbia University in the City of New York ("Columbia") and Defendant Symantec Corporation ("Symantec") submit the joint compliance statement provided below.

Additionally, pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26(A)(1), and the Court's Order Granting Columbia's Motion for Court Conference (Dkt. No. 255) (the "Conference Order"), counsel for Columbia and counsel for Symantec have met and conferred with respect to the August 1, 2019 in-person court conference and with respect to case scheduling issues. The parties thought it might be helpful if the Court received a short submission in advance of the conference, and the parties respectfully request the opportunity to address the issues set forth below.

Joint Compliance Statement Pursuant to the Claim Construction Order

- On July 16, 2019, Columbia served Symantec with “an updated claim chart, to be comprised of the original information as defined in paragraph 3 of the Court’s March 17, 2014 Order while eliminating only the now-excluded claims,” as required by the Order. Exhibit A is a copy of the cover submission that accompanied Columbia’s modified claim chart.
- Symantec no longer intends to rely on any prior art originally asserted under Paragraph 5 of the Court’s March 17, 2014 Order, and therefore did not serve an updated list of prior art as defined in the Court’s Order of July 2, 2019.
- On July 30, 2019, Columbia served Symantec with Columbia’s Response to Symantec’s Failure to Provide an Updated Prior Art Statement Pursuant to the Court’s Order of July 2, 2019. Exhibit B is a copy of Columbia’s Response.
- On July 30, 2019, Symantec served Columbia with “a similarly updated claim chart as defined in paragraph 4 of the Court’s March 17, 2014 Order.” Exhibit C is a copy of the cover page of the updated claim chart.

Tutorials Presented at the August 1, 2019 Conference

Pursuant to the Conference Order, the Parties are prepared to present (1) a general patent tutorial and (2) a tutorial regarding the technology at issue in this case. The Parties defer to the Court’s preference, but Counsel have met and conferred and propose the following:

- The general patent tutorial will be a joint presentation lasting no more than 30 minutes.
- Each Party will present its own technology tutorial, and each side will be allocated approximately 45 minutes, at the Court’s discretion. As is common in patent cases, the parties have differing views regarding the technology at issue in this case, so each party respectfully requests the opportunity to provide its perspective.

Pre-Trial Deadlines

Pursuant to the Conference Order, the Parties will be prepared to discuss pre-trial deadlines and the Court’s stay of Symantec’s Motion for Judgment on the Pleadings (Dkt. No. 245). With respect to pre-trial deadlines, Counsel have met and conferred, and Exhibit D sets forth the schedule proposed by the Parties, subject to the Court’s availability.

As noted in Exhibit D, the Parties have agreed to a proposed schedule for additional claim construction briefing, as permitted by the Court's July 2, 2019 Order (Dkt. No. 256).

Although the Parties initially had a disagreement regarding page limits for claim construction briefs, Columbia understands that Symantec will defer to the Court's preference.¹ Finally, Columbia respectfully requests that the Court set a trial date in February or March 2020, at the Court's convenience. Symantec has not agreed to a proposed trial date, and instead defers to the Court's discretion. Symantec will be ready to discuss trial dates if the Court wishes to do so, but notes that one of Symantec's attorneys, Richard W. Erwine, has trials scheduled for February 18-24 and March 18-24. Accordingly, to the extent that the Court is inclined to set a trial date, Symantec respectfully requests that it begin the second week in April or later. Columbia does not believe that the other cases identified by Symantec's counsel preclude a trial in this case in February or March 2020, but if they do, Columbia respectfully requests that the Court instead set a trial date in mid to late January 2020, and the deadlines in Exhibit D can be adjusted accordingly.

With respect to Symantec's Motion for Judgment on the Pleadings (Dkt. No. 245), if the Court lifts the stay on briefing, the Parties have agreed to a proposed briefing schedule, which is included in Exhibit D. Although the Parties have agreed to a proposed briefing schedule, and Columbia believes the parties should complete and close briefing on the proposed schedule, Columbia does not believe resolution of Symantec's belated motion should be permitted to delay the trial of this 2013 case. If resolution of the motion would cause such a delay, Columbia respectfully requests that the Court allow the

¹ Columbia notes that Your Honor's Model Schedule Time Table for Patent Infringement Cases allows 50 pages for opening briefs and 25 pages for responses, regardless of the number of terms at issue. Additionally, Local Rule 7(F)(3) allows 30 pages for opening and response briefs. Columbia believes at least 30 pages for each brief would be appropriate.

parties to complete briefing on the proposed schedule, but defer resolution of the motion until summary judgment or post-trial. Columbia notes that the text of Federal Rule of Civil Procedure 12(c) provides that such motions must be brought “early enough not to delay trial.” Symantec has provided no explanation for why it did not raise this purported motion for “judgment *on the pleadings*” back in October 2018 so the motion could have been efficiently briefed and resolved at the same time as Columbia’s Motion for Partial Summary Judgment and Symantec’s Motion to Permit Additional Claim Construction. This tardy motion should not be permitted to further delay a trial in this case.

Symantec disagrees, noting that its motion was timely filed pursuant to Rule 12(c) and could not delay a trial date considering that one has not yet been set. In addition, even if a trial date were set for Columbia’s requested February or March time frame, the motion will be fully briefed by August 19, 2019, and accordingly would not delay a trial scheduled for over six months later. Moreover, there is no basis to defer resolution of Symantec’s motion “until summary judgement or post-trial.” Such a delay would potentially waste Court and juror resources considering that Symantec’s motion, if granted, would dispose of the remaining two patents asserted in the case. Finally, motions for summary judgment or post-trial motions have different procedural postures than a motion brought pursuant to Rule 12(c), and accordingly it does not make sense to treat it as a motion for summary judgment or a post-trial motion.

July 31, 2019

Respectfully submitted,

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK

By: /s/ Dana D. McDaniel
Dana D. McDaniel (VSB No. 25419)
dmcdaniel@spottsfain.com
John M. Erbach (VSB No. 76695)
jerbach@spottsfain.com
Spotts Fain, P.C.
411 East Franklin Street, Suite 600
Richmond, Virginia 23219
Phone: (804) 697-2065
Fax: (804) 697-2165

Garrard R. Beeney (*pro hac vice*)
beeneyg@sullcrom.com
Stephen J. Elliott (*pro hac vice*)
elliotts@sullcrom.com
Dustin F. Guzior (*pro hac vice*)
guziord@sullcrom.com
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Phone: (212) 558-4000
Fax: (212) 558-3588

ATTORNEYS FOR PLAINTIFF
THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW
YORK

SYMANTEC CORPORATION

By: /s/ Dabney J. Carr
Dabney J. Carr, IV, VSB #28679
TROUTMAN SANDERS LLP
P. O. Box 1122
Richmond, Virginia 23218-1122
Telephone: (804) 697-1200
Facsimile: (804) 697-1339
dabney.carr@troutmansanders.com

David A. Nelson (*pro hac vice*)

davenelson@quinnemanuel.com
Stephen A. Swedlow (*pro hac vice*)
stephenswedlow@quinnemanuel.com
500 West Madison St., Suite 2450
Chicago, Illinois 60661
Telephone: (312) 705-7400
Facsimile: (312) 705-7401
QUINN EMANUEL URQUHART &
SULLIVAN LLP

Yury Kapgan (*pro hac vice*)
yurykapgan@quinnemanuel.com
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100
QUINN EMANUEL URQUHART &
SULLIVAN LLP

Derek L. Shaffer (*pro hac vice*)
derekshaffer@quinnemanuel.com
777 6th Street NW, 11th floor
Washington, D.C. 20001-3706
Telephone: (202) 538-8000
Facsimile: (202) 538-8100
QUINN EMANUEL URQUHART &
SULLIVAN LLP

ATTORNEYS FOR DEFENDANT
SYMANTEC CORPORATION

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 31st day of July, 2019, I will electronically file the foregoing using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

By: /s/ Dana D. McDaniel
Dana D. McDaniel (VSB No. 25419)
dmcdaniel@spottsfain.com
John M. Erbach (VSB No. 76695)
jerbach@spottsfain.com
SPOTTS FAIN, P.C.
411 East Franklin Street, Suite 600
Richmond, Virginia 23219
Phone: (804) 697-2065
Fax: (804) 697-2165